

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 2001  
at 8:15 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Anne Felstet, Committee Secretary  
Valencia Lane, Legislative Branch  
Jodi Pauley, Transcriptionist

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: None  
Executive Action: HB 195, HB 208, HB 219, HB 254,  
HB 208, HB 261, HB 359, HB 521,  
HB 563, HJ 17, HB 496, HB 290, HB  
570, HB 182

#### **EXECUTIVE ACTION ON HB 195**

**Motion:** SEN. RIC HOLDEN moved HB 195 BE CONCURRED IN.

**Discussion:**

**SEN. DUANE GRIMES** said this added a penalty to those youth who could be tried as an adult and would add criminal possession of dangerous drugs with the intent to distribute.

**Vote:** Motion carried 6-0 with **SEN. DOHERTY, SEN. HALLIGAN** and **CHAIRMAN GROSFIELD** being excused.

**EXECUTIVE ACTION ON HB 208**

**Discussion:**

**Valencia Lane, Legislative Staff**, said there were amendments for HB 208 and they were prepared at the suggestion of the district court judges. She said the sponsor did not like the amendments but many district judges wanted the amendments.

**SEN. GRIMES** suggested to hold off action on this bill.

**EXECUTIVE ACTION ON HB 219**

**Motion:** **SEN. MCNUTT** moved HB 219 BE CONCURRED IN.

**Discussion:**

**SEN. GRIMES** said he had some concern with inadvertent drive offs, but this issue has been resolved.

**SEN. WALT MCNUTT** said if he drove into a super bumper and inadvertently drove off, he would not be prosecuted under this. He said what they were looking for blatant violators of this issue.

**SEN. GRIMES** read line 26, page three and asked when this would become effective. **Valencia Lane** said if they look at MCA 46-21-102 there were guidelines offered. She said it meant when the time and chance had passed for appeals.

**Vote:** Motion carried 6-0

**EXECUTIVE ACTION ON HB 254**

**Discussion:**

**SEN. HOLDEN** referred to page two and added there was discussion of amendments striking lines 21-28. **Valencia Lane** said she had the amendments HB025401.avl **EXHIBIT(jus66a01)**.

**SEN. GRIMES** discussed the amendments.

**SEN. HOLDEN** said he did not feel comfortable passing the amendments as he was not familiar with the procedures being suggested.

**SEN. STEVE DOHERTY** said when they dealt with leveraging and garnishing they had to give the individual, whose property was being levied upon, notice the property would be taken. He said the banks want these people's rights to be protected.

**Valencia Lane** said the bill was similar to HB 496 and dealt with the bankers and their concerns.

**SEN. AL BISHOP** discussed SB 46 and said if the bill died the HB 254 would die also. He felt the main focus of the bill was to have the execution last for 120 days or until the debt was paid.

**SEN. GRIMES** said Subsection (c) was the unusual part of this and 120 days was typical. **SEN. BISHOP** said right now it has to be done every pay period and they wanted to get away from that.

**SEN. JERRY O'NEIL** asked what "levy applies to all pay periods beginning on the date of service through the expiration of the writ" meant. **SEN. GRIMES** explained if someone owes a judgment, as an employer, he would have to withhold money every pay period.

**SEN. O'NEIL** asked if there was a two-week pay period and they serve you seven days into the pay period was that exempt or was it subject to the levy. **SEN. MIKE HALLIGAN** said it would begin on the date of service. He said if they were served on May 1st and the employer was not served until May 15 it applied to May 1st.

**SEN. O'NEIL** wondered if they were both served on May 7th if it applied to that pay period or the next. **SEN. HALLIGAN** said it could be levied on half of the paycheck for that period.

**Motion:** **SEN. HALLIGAN** moved HB 245 BE CONCURRED IN.

**Motion/Vote:** **SEN. MCNUTT** moved the amendments HB025401.avl.  
**Motion carried 8-0.**

**Discussion:**

**SEN. O'NEIL** felt the language was confusing pertaining the levies.

**SEN. MCNUTT** explained they were on a monthly pay period and how they were served.

**SEN. GRIMES** said if they inserted the word "after" in place of the word "beginning" it would still have the same effect and perhaps add clarification.

**SEN. O'NEIL** asked if they could delete the sentence. **SEN. DOHERTY** said he felt the sentence was clear, once the employer had notice they have to act.

**SEN. GRIMES** said the way it was written it would require a person to prorate a pay period.

**SEN. DOHERTY** said he felt the language needed to be in there because people would understand that the writ was alive for 120 days or until the judgment was satisfied.

**SEN. BISHOP** thought it didn't make sense if the levy was served in the middle of a pay period to apply only forward and not back days of the pay period.

**SEN. HALLIGAN** said by inserting the word "entire" this might help to clarify the issue. **SEN. GRIMES** asked if "entire" would go in the place of the word "all".

**SEN. O'NEIL** said this was fine on the first pay period, but this would extend beyond the expiration of the writ in some cases.

**SEN. GRIMES** said if a person had \$10 left on a \$500 bill, it is not up to the employer to only take out \$10, unless he was notified.

**SEN. HALLIGAN** said what if they say the levy applied to the pay period beginning at the date of service through the expiration of the writ. If the writ ended on May 10th and the pay period ends on the 15th would they still take out the same amount. **SEN. GRIMES** agreed.

**SEN. DOHERTY** said if there was a judgment to pay \$750 and the employer took out \$100 per pay check, the eighth check would only have to be for \$50.

**SEN. BISHOP** referred to the earnings as property. He said if the writ was served in the first pay period it didn't matter what day

it was served because whatever property the debtor had would come out of his paycheck from the preceding 10 days and any pay periods after that. The writ ended in 120 days and could not be collected there after. He felt it did need to be clarified because it would cause confusion because the debtor would be claiming one thing and the creditor something else and the employer was caught in the middle. He added the levy should apply to the entire pay period when it was served and all pay periods thereafter.

**Substitute Motion:** SEN. HALLIGAN moved a conceptual amendment to say the levy would apply to the entire pay period beginning at the date of service through the expiration of the writ.

**Discussion:**

SEN. O'NEIL said he agreed it should apply entirely to the first pay period and to the expiration of the writ.

SEN. HALLIGAN agreed, but he didn't know whether due process or the constitution would prevent the execution on money after the expiration of the writ.

SEN. BISHOP said if the 120th day was on the 10th day of the pay period and they go to the end of the pay period they were extending the writ by five days and that was not what it stated.

SEN. GRIMES said it has to be served every pay period or the employer would not have to withhold.

SEN. BISHOP said if they had to serve the writ every time, they were not going to wait until the 15th day of the pay period.

SEN. MCNUTT mentioned one of the reasons it was going to be served for 120 days instead of every pay period.

**Substitute Motion:** SEN. O' NEIL made a substitute motion to strike language in its entirety in Subsection (5) (a).

**Discussion:**

SEN. HALLIGAN said he opposed the motion. He stated there needed to be clarification.

SEN. BISHOP said it should be spelled out because they were having problems interpreting language.

SEN. O'NEIL said if they deleted the line dealing with the levy, it would still be dependent upon the earnings of the judgment

debtor and would expire in 120 days. He added they could keep the second sentence.

**Vote:** Motion failed 1-7 with SEN. O'NEIL voting aye.

**Substitute Motion:** SEN. HALLIGAN Withdrew his first motion and made a substitute motion to change Subsection(5)(a) "a levy applies to earnings due on or after the date of service through the expiration of the writ."

**Discussion:**

SEN. O'NEIL asked about the earnings that were earned before the service of the writ and if they would be executable. SEN. HALLIGAN answered by using the word "due" they were earned upon that date and were due.

**Vote:** Motion carried unanimously.

**Discussion:**

SEN. GRIMES referred to Subsection (5), and said it discussed multiple levies having priority according to the date and time of service. He said this was the way it was currently. He wondered about the language.

SEN. O'NEIL asked if they would need a clause to require the levying officer to notify the employer when the judgment was satisfied. SEN. GRIMES stated an employer would be withholding for 120 days and if the levy officer didn't offer the employer any further instructions that was their problem.

SEN. MCNUTT said the employee would keep track of when it was going to be paid off and they would make sure the employer was not withholding any more money from their paycheck.

**Motion/Vote:** SEN. HALLIGAN moved HB 245 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with SEN. GROSFIELD being excused.

#### **EXECUTIVE ACTION ON HB 208**

**Discussion:** SEN. O'NEIL asked what line 28 meant. SEN. GRIMES explained it was existing law.

SEN. HALLIGAN said he did not fully understand contempt law but there were some amendments needing to be put on the bill  
HB020801.avl **EXHIBIT(jus66a02)**.

**SEN. O'NEIL** said he did not like the amendments due to the judge allowing whatever he wanted and the reason for this bill was to add control with the issue.

**SEN. GRIMES** referred to page three and added somebody would have the right to defend themselves when they were in contempt of court. The amendments stated there would be a limit on this.

**Motion/Vote:** **SEN. HALLIGAN** moved the amendments HB020801.av1. Motion carried unanimously.

**Motion/Vote:** **SEN. HALLIGAN** moved HB 208 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with **SEN. GROSFIELD** being excused.

*{Tape 2; Side A}*

**EXECUTIVE ACTION ON HB 261**

**Motion:** **SEN. HALLIGAN** moved HB 261 BE CONCURRED IN.

**Discussion:**

**SEN. O'NEIL** discussed an amendment HB026101.av1  
**EXHIBIT(jus66a03).**

**SEN. GRIMES** said, "purposely and knowingly," was clear language and it may create a loophole.

**SEN. HALLIGAN** said the bill was trying to tie everything into one unlawful act and it was already clear. He added a prosecutor couldn't prosecute without the connection to dangerous drugs.

**SEN. O'NEIL** referred to Section(D) and felt there needed to be more work done on the amendment. He offered an incident when he worked in a hardware store.

**SEN. GRIMES** said it does say precursors to dangerous drugs. **SEN. O'NEIL** said it related to those chemicals and within Section(D) a person could be guilty if they were selling dangerous drugs.

**SEN. HALLIGAN** said it would be better to strike Section(D). **SEN. O'NEIL** said he didn't think they should strike it because they want to make it illegal for somebody to sell chemicals that they know would be used for dangerous drugs.

**SEN. HALLIGAN** said there were lots of people selling the precursors to these dangerous drugs and they don't know what the

buyers were going to be using them for and the language was fairly broad.

**Motion/Vote:** SEN. O'NEIL made a motion to strike Subsection(d) in its entirety. Motion carried 7-1 with SEN. GRIMES voting no.

**Motion/Vote:** SEN. DOHERTY moved HB 261 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with SEN. GROSFIELD being excused

EXECUTIVE ACTION ON HB 359

**Motion:** SEN. HALLIGAN moved BE AMENDED HB035901.avl  
**EXHIBIT** (jus66a04) .

Discussion:

SEN. HALLIGAN explained the amendments.

SEN. GRIMES referred to the amendments and asked if this applied to children who hadn't been tried as an adult or would it apply to all. SEN. HALLIGAN answered only if they hadn't been tried as an adult.

SEN. O'NEIL asked if this would include a situation where a juvenile stole a car when he is 16 and if his DNA was on record forever. SEN. HALLIGAN explained this was a discretionary offense that could eventually end up in adult court, and he didn't know of any prosecutor who would bring a juvenile into adult court for car theft.

SEN. O'NEIL asked if this would only apply if the juvenile were tried as an adult. SEN. HALLIGAN answered yes.

**Vote:** Motion carried unanimously.

**Motion:** SEN. DOHERTY moved HB 359 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. HOLDEN asked if an applicability clause was included in the amendments. SEN. HALLIGAN answered no, it was not.

SEN. HOLDEN referred to page two and wondered about the discussion that DNA would not be kept on file once the offender reached the age of majority. Valencia Lane said they treated youths differently as they were tried in juvenile court and they



have the right to have their records deleted once they reach the age of majority.

**SEN. GRIMES** discussed a felony offense on page one. He felt there should be records of DNA for serious crimes, however, he said there were felonies for certain things as check forgery, bribery, and he asked if these were included in the DNA database also. **SEN. HALLIGAN** said the DNA should be on record forever.

**SEN. DOHERTY** said DNA testing should apply to a violent crime that was a felony, but not apply for simple felonies. **Valencia Lane** gave the descriptions of offenses in Title 45.

**SEN. O'NEIL** felt some felonies might need to be changed to misdemeanors, and he added some of the misdemeanors also needed to be included in this database.

**Substitute Motion/Vote:** **SEN. DOHERTY** moved a conceptual amendment to include the DNA in Chapter 5 and Chapter 9 of Title 45. Motion carried unanimously.

**Motion/Vote:** **SEN. GRIMES** moved HB 359 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with **SEN. GROSFIELD** being excused.

#### **EXECUTIVE ACTION ON HB 521**

**Motion:** **SEN. O'NEIL** moved HB 521 BE CONCURRED IN.

#### **Discussion:**

**SEN. O'NEIL** referred to page two and mentioned there was a listing of sentencing enhancing acts and from testimony there was discussion this was not an inclusive list.

**Substitute Motion:** **SEN. HALLIGAN** moved a conceptual amendment to strike on page two, line three beginning with "an" and through "place" to line 14.

#### **Discussion:**

**SEN. HALLIGAN** said they don't need the list at all as something might be omitted. **SEN. O'NEIL** said the reason the list was there was to give some directions to the prosecutors around the state.

**SEN. GRIMES** said he didn't know if having it in or out was that important as prosecutors should know already and he did not want to intentionally limit it.

**SEN. MCNUTT** stated a prosecuting attorney would have the list of enhancements and they should not limit it or have the misunderstanding that it was only pertaining to this list.

**SEN. HALLIGAN** said the act already had to be proved in the original case, charged in the information, complaint, indictment, and proved beyond a reasonable doubt. He didn't feel the list was needed.

**Vote:** Substitute Motion carried 7-0 to the amendment with Sen. Doherty and Sen. Grosfield being excused.

**Substitute Motion/Vote:** SEN. HALLIGAN moved a conceptual amendment to strike subsection(5) on page two. Motion carried 7-0.

**Discussion:** SEN. GRIMES discussed the bill and the ramifications of enhancement and how they would be applied. He wondered about subsection(3). **Valencia Lane** explained the subsection and mentioned a U.S. Supreme Court decision from October 1999, Apprendi vs. New Jersey. She discussed the case and said the court applied an enhancement statute at this time.

**Motion/Vote:** SEN. HALLIGAN moved HB 521 BE CONCURRED IN AS AMENDED. Motion carried 7-0.

*{Tape 2; Side B}*

#### **EXECUTIVE ACTION ON HB 563**

**Motion:** SEN. O'NEIL moved HB 563 BE POSTPONED INDEFINITELY.

#### **Discussion:**

**SEN. HALLIGAN** said they heard testimony in which two-thirds of the sexual cases were turned down because they cannot be proven. He said this bill allowed for the statute of limitations to be extended similar to homicide. He felt the bill was necessary because there were many victims who didn't come forward because they were embarrassed about what had happened.

**SEN. GRIMES** liked the thought of having an expanded statute of limitation to try and get some of these people. He had concern with someone trying to accuse their father of incest, for example, years later when it didn't even happen.

**SEN. O'NEIL** said they already have a statute of limitation for five to eight years after the victim reaches the age of 21 and this was longer than anything they have, except for murder.

**SEN. GRIMES** agreed people changed, but they still have to be responsible for their actions. He stated the reasons they could not do this was due to DNA and a case probably wouldn't be brought up unless there was DNA evidence. **Valencia Lane** said mental and emotional strengths of the victims, who want to bring their cases forward, was the situation.

**SEN. O'NEIL** said DNA was not in the bill anywhere. **SEN. GRIMES** said this could also apply to areas of date rape and it would be very hard to recall the circumstances 15 years later.

**Vote:** Motion failed 1-6 to postpone indefinitely with Sen. O'Neil voting aye.

**Motion:** SEN. HALLIGAN moved HB 563 BE CONCURRED IN.

**Substitute Motion:** SEN. O'NEIL made a conceptual amendment to apply to cases only where DNA samples were available.

**Discussion:**

**SEN. MCNUTT** said if they look at the three sections this law pertains to: assault, intercourse, and incest there was not going to be much DNA with these cases.

**SEN. GRIMES** felt incest was on the rise with the loosening of morals and this was wrong.

**Vote:** Motion failed 1-6 on the amendment with Sen. O'Neil voting aye.

**Discussion:**

**SEN. GERALD PEASE** said 15 years seemed like a long time. If a date rape occurred 15 years ago what effect does that take upon those people involved who now have families and jobs.

**SEN. GRIMES** said this was a concern, but these problems need to be addressed even though there could be some mischievousness.

**SEN. PEASE** said perhaps it could be changed to ten years. **SEN. RIC HOLDEN** said he would support that.

Motion: SEN. PEASE made a conceptual amendment to change the language from 15 years to 10 years. Motion carried 7-0.

Vote: Motion carried 6-1 with SEN. O'NEIL voting no that HB 563 BE CONCURRED IN AS AMENDED. SEN. GROSFIELD and DOHERTY were excused.

EXECUTIVE ACTION ON HJR 17

Discussion:

Valencia Lane discussed the amendments **EXHIBIT(jus66a05)**.

Motion/Vote: SEN. HALLIGAN moved HJR 17 BE TABLED. Motion carried 7-0 with SEN. GROSFIELD and DOHERTY being excused.

*{Tape 3; Side A}*

EXECUTIVE ACTION ON HOUSE BILL 496

Discussion:

Valencia Lane explained the amendments handed out **EXHIBIT(jus66a06)**. She also explained some informal amendments that accompanied the formal set **EXHIBIT(jus66a07)**.

Motion: SEN. GRIMES moved the amendments.

Discussion:

SEN. O'NEIL asked about the changes. Valencia Lane said this was amendment seven with a new Subsection(c).

SEN. O'NEIL asked if there was personal service, or was it only effective in writing. Valencia Lane said it was in subsection (b)1 and 2. Subsection (2) only dealt with mail service.

SEN. GRIMES asked if this was consented to on a case by case basis or could a process server have a contract or written agreement with a bank. Steve Wade, Burlington Northern Santa Fe, explained if a bank wanted to allow service by mail they could consent to the levying officer or sheriff and it could also be terminated.

SEN. O'NEIL asked how this applied if a writ was mailed to a person who was not a legal entity, but a person. Steve Wade said

if it were upon an individual it would still probably have to be personal service.

**SEN. O'NEIL** wondered about the individual's situation and gave an example. **Steve Wade** explained it would depend upon the circumstances.

**SEN. O'NEIL** asked for clarification. **Valencia Lane** said they could have language added offering an individual to be served personally.

**SEN. O'NEIL** used an example of a rancher holding a horse. **Valencia Lane** said these amendments were drawn up with the thought in mind that there would be mail service on legal entities, and they would clarify personal service on an individual.

**Vote:** Motion carried 7-0 with **SEN. HALLIGAN** and **DOHERTY** being excused.

**Discussion on Amendments by Mr. Hawkins:**

**CHAIRMAN GROSFIELD** said there were some amendments proposed in committee by **Mr. Hawkins**. The amendments really don't pertain to this bill but the title was broad enough to include them under the bill and he asked if the committee had any comments.

**SEN. GRIMES** said there were some concerns because there hadn't been any hearing on the issue even though it did fit within the title of the bill. He added this would be better to go into an interim study, if passed now it may be a constitutional issue and then the Supreme Court would make a decision and make it impossible for them to work on it.

**SEN. O'NEIL** asked if Section (3) could be added to the bill. **SEN. MCNUTT** said they did not have a hearing on this and it shouldn't be included in the bill at this time.

**SEN. HALLIGAN** said this was a constitutional issue and he felt the courts were already doing this internally.

**Motion:** **SEN. GRIMES** moved **HB 496 BE CONCURRED IN AS AMENDED.**

**Discussion:**

**SEN. O'NEIL** disagreed with the issue and added there must have been a hearing on this issue as there was testimony on it. **SEN.**

**HALLIGAN** said there was no notice to the public that this issue was going to be discussed at the hearing.

**Vote: Motion carried 8-0 with SEN. DOHERTY being excused.**

***{Tape 3; Side B}***

**EXECUTIVE ACTION ON HOUSE BILL 290**

**Discussion:**

**CHAIRMAN GROSFIELD** addressed the testimony by the proponents. He felt the wording "overcome by deception, coercion or surprise", would lead to unintended consequences for other kinds of situations that do not involve assault.

**SEN. GRIMES** said they have discussed many other bills this would also apply to. He said the word "surprise" could be the problem and asked if it was defined anywhere in statute.

**Substitute Motion: SEN. HOLDEN moved a conceptual amendment, page 1, line 16 to strike "or surprise".**

**Discussion:**

**SEN. GRIMES** wondered if someone was in a dentist chair and there was sexual conduct, could deception and coercion apply in this case. He said surprise has to do with the unexpected. **Valencia Lane** said on line 11, the definition was for 45-5-503 and did not apply to assault. She said most of the examples that were used in testimony had to do with surprise. She felt surprise was critical to the people who wanted the bill.

**SEN. HALLIGAN** said when they were talking about the surprise issue they also have to include the sexual intercourse component as well.

**Withdrawn Motion: SEN. HOLDEN withdrew his motion to strike "surprise".**

**Discussion:**

**SEN. O'NEIL** said most of this was covered under assault. He offered examples of how to prove the situations.

**Motion: SEN. O'NEIL moved to Table HB 290. Motion failed 3-5 with SEN. BISHOP, MCNUTT and O'NEIL voting aye.**

**Motion:** SEN. HALLIGAN moved HB 290 BE CONCURRED IN.

**Discussion:**

CHAIRMAN GROSFIELD said "I will love you in the morning", was defined as deception or something else and what else has to proved in a case like that. SEN. HALLIGAN said the court would look at the specific facts of the case and see how fragile or naive the witness was. There would have to be more deception and the acts going along with "I will love you in the morning", to actually hold up in court and create the offense.

SEN. O'NEIL said this would open up the gate to lots of mischievousness .

CHAIRMAN GROSFIELD said he could understand coercion and surprise but what about deception. SEN. HALLIGAN said the courts would need to have some extreme examples

SEN. GRIMES cited a case that was in statute and how it related to sexual intercourse.

CHAIRMAN GROSFIELD said the reason this bill was before them was because there was not an opportunity for resistance. He said they heard testimony of problems prosecuting people in those types of situations because there was no resistance. He felt especially in cases of surprise there was no opportunity to resist.

SEN. HALLIGAN thought perhaps they should hold this bill.

**Withdrawn Motion:** SEN. HALLIGAN withdrew his motion.

**EXECUTIVE ACTION ON HOUSE BILL 570**

**Motion:** SEN. HALLIGAN moved HB 570 BE CONCURRED IN.

**Discussion:**

CHAIRMAN GROSFIELD referred to page two and explained a problem with the three working days because it wouldn't be done quickly. He didn't feel the bill was needed.

**Motion:** SEN. O'NEIL made a conceptual amendment adding on line 12, page 2 to allow 7 days and to not exceed 10 days.

**Discussion:**

**SEN. HALLIGAN** asked why change the language to insert the days.  
**SEN. O'NEIL** explained right now they could offer three hours of notice and this was not a valid amount of time. He said if someone was not complying they should have some time to rectify their situation.

**CHAIRMAN GROSFIELD** said there was testimony it was not done in 3 days and they use that minimum as an incentive to negotiate an agreement. He added they seldom prosecute under this.

**SEN. O'NEIL** said the State did this before and they did not have the resources to make sure this was happening quickly. He said now that the counties are doing it, they might be more efficient.

**Substitute Motion/Vote:** **SEN. O'NEIL** made a substitute amendment that it shall be at least 7 days and not over 30 days. Motion carried 7-1 with **SEN. HALLIGAN** voting no.

**Vote:** Motion carried 6-2 that HB 570 BE CONCURRED IN AS AMENDED with **Sen. GROSFIELD** and **MCNUTT** voting no.

*{Tape 4; Side A}*

#### **EXECUTIVE ACTION ON HOUSE BILL 182**

##### **Discussion:**

**Mark Taylor, MT Judges Assoc.**, explained this bill would allow a judge, who is involuntarily retired, called back into duty by the Chief Justice. He said there were procedural safeguards to make sure the judge was experienced. He discussed procedural safeguards within the bill.

**Motion:** **SEN. MCNUTT** moved to reconsider their action on HB 182 and remove it from the table.

##### **Discussion:**

**SEN. HOLDEN** said with the proposed amendment they were still allowing a judge, who was not elected to still serve the court. He strongly opposed this because when a judge lost a race that was an indication from the electorate that they do not want him or her.

**SEN. GRIMES** said judges think differently once they were elected and if they were using a judge that had been defeated at the polls it could cause a lot of problems.



Withdrawn Motion: SEN. MCNUTT moved to withdraw his motion to  
reconsider HB 182.

**ADJOURNMENT**

Adjournment: 11:55 A.M.

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SEN. LORENTS GROSFIELD, Chairman

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ANNE FELSTET, Secretary

LG/AF

**EXHIBIT** (jus66aad)